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BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 90-343-E - ORDER NO. 91-67  
January 28, 1991

IN RE: Pelzer Hydro Company, Inc.,	)	
	)	
Complainant	)	
	)	ORDER
VS	)	DENYING MOTION
	)	OF COMPLAINANT
Duke Power Company,	)	
	)	
Respondent	)	

This matter comes before the South Carolina Public Service Commission (the Commission) by way of a Motion filed January 2, 1991, by Pelzer Hydro Company, Inc. to enforce Order No. 90-850, in the above captioned docket. On January 14, 1991, Duke Power Company (Duke) filed a response to Motion of Complainant to Enforce Order which opposed the Motion filed by Pelzer on the grounds that Duke had complied with the Order of the Commission.

Based on the evidence in the record, the Commission makes the following findings of fact and conclusions of law:

1. Pelzer alleges that Duke has violated the Commission's Order by presenting a long-term contract with terms and conditions that are not "substantially the same as those contained in the Aquenergy contracts". The Aquenergy contracts are five contracts signed by Duke and Aquenergy on December 29, 1987. The Commission finds that Duke has complied with the terms of the Order. Duke

proposed an eight year term in the contract. Pelzer requested and the Commission granted "the same rates as contained in the Aquenergy contract". However, there were only eight years of rates remaining in the Aquenergy contracts, and Duke proposed the same rates to Pelzer. Therefore, an eight year term is appropriate for the Pelzer contract in order for the term of the Pelzer contract to match the eight years of rates in the Pelzer contract and the eight years of rates remaining in the Aquenergy contracts. The expiration of the term of the Pelzer contract also coincides with the expiration of all other Aquenergy contracts.

2. Pelzer stated that a provision for extending the term for the additional five years with rates to be negotiated was not included in the proposed contract. That provision shall be included.

3. Pelzer asserts that the Commission has required that rates be established for a 10-year period including 1998 and 1999. (The Commission believes that the Complainant refers to the years 1999 and 2000 since there is a rate stated in the Aquenergy contracts for 1998.) Pelzer makes this assertion despite the fact that the Aquenergy contracts do not have rates specified for the years 1999 and 2000. In fact, the rates for 1999 and 2000 in the Aquenergy contracts are to be "mutually agreed upon by the parties negotiating in good faith" as set forth in paragraph 5 of the Aquenergy contracts. The Commission disagrees with Pelzer's assertion that the Commission's Order requires that rates, which do not exist in the Aquenergy contracts, should be created

specifically for the Pelzer projects for the years 1999 and 2000. The Commission concluded in its previous Order that "the same rates (emphasis added) contained in the Aquenergy contracts" should be extended to the Pelzer projects "in order for these projects to have an opportunity to be financially viable". In complying with the Commission's Order, Duke proposed a contract to Pelzer which offers the Pelzer projects the same opportunity as the Aquenergy projects. The rates for Pelzer are identical to the rates for Aquenergy: The actual rates are stated in the contract for the years 1990-1998 and rates are to be negotiated for the years 1999-2000. The rates for the years 1990-1998 in the Aquenergy contracts are the same as the rates proposed in the Pelzer contract. The rates for 1999 and 2000 will be negotiated for the Aquenergy contracts and, therefore, should be negotiated for the Pelzer contract.

4. Pelzer further contends that the rates for 1998 and 1999 (actually 1999 and 2000) could easily be established by merely extrapolating a percentage increase for each of the two years. The Commission disagrees with this contention of Pelzer. Duke agreed with Aquenergy in 1987 to rates for the years 1988 through 1998 and nothing more. Duke and Aquenergy did not agree to rates for 1999 and 2000 and did not agree to extrapolate a percentage increase for any future years of the contracts. Pelzer's proposed methodology for escalation for the ninth and tenth years of the Pelzer contract could, in effect, inappropriately pre-establish rates for the years 1999 and 2000 and beyond in other QF contracts which have

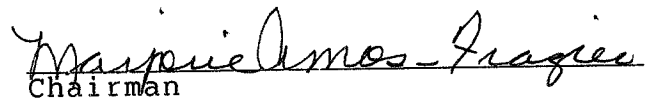
provisions for rates to be negotiated for those years. These pre-established rates would usurp the normal process of the rate negotiation provisions in Duke's contracts with the five Aquenergy projects as well as any other QF in South Carolina.

Furthermore, Pelzer's proposed methodology for escalating the purchased power rates for the period 1999-2000 could result in an overpayment to Pelzer above Duke's estimated avoided cost. If Pelzer's proposed methodology were applied to all existing Aquenergy and Pelzer projects it could result in further overpayments to Aquenergy and Pelzer above the estimated avoided cost for those years.

5. From September 12, 1990 (the date of the previous order in this Docket) to the date of this order, Pelzer has been receiving less than the approved rates for service under the Aquenergy contracts. Therefore, the Commission orders Duke to pay Pelzer the difference between the rates that Pelzer is currently receiving and the approved rates beginning September 12, 1990.

6. The Commission denies Pelzer's request for interest on the difference between the disputed rates and denies Pelzer's request for attorney's fees. The Commission, based on the above findings and conclusions, denies the Motion of Pelzer.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director

(SEAL)